

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
JOSEPH DE LEON (Cal. Bar No. 313471)
4 Assistant United States Attorney
General Crimes Section
5 1200 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-7280
7 Facsimile: (213) 894-0141
Email: Joseph.De.Leon@usdoj.gov
8

Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MARC JESUS LOPEZ, et al.,

16 Defendants.
17
18
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No. 23-cr-00126-FLA-2

GOVERNMENT'S SENTENCING POSITION

Hearing Date: April 5, 2024

Hearing Time: 10:00 a.m.

Location: Courtroom of the
Hon. Fernando L.
Aenlle-Rocha

20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Joseph De Leon,
23 hereby files its sentencing position regarding defendant JUAN NICOLAS
24 BENITEZ.

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1 The government's sentencing position is based upon the attached
2 memorandum of points and authorities, the files and records in this
3 case, the Presentence Investigation Report, and any other evidence
4 or argument that the Court may permit. The government respectfully
5 requests the opportunity to supplement its position as may become
6 necessary.

7
8 Dated: March 12, 2024

Respectfully submitted,

9 E. MARTIN ESTRADA
10 United States Attorney

11 MACK E. JENKINS
12 Assistant United States Attorney
Chief, Criminal Division

13 /s/ Joseph De Leon

14 JOSEPH DE LEON
Assistant United States Attorney

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On or about February 3, 2022, in Los Angeles County, within the Central District of California, defendant JUAN NICOLAS BENITEZ ("defendant"), knowingly possessed forty-seven rounds of 9mm caliber ammunition knowing that he had been convicted of a misdemeanor crime of domestic violence, namely, Corporal Injury to a Spouse, in violation of California Penal Code Section 273.5. Pursuant to a Plea Agreement, defendant pleaded guilty to being a prohibited person in possession of ammunition. (Dkt. 140.)

The government concurs with the United States and Pretrial Services Office's ("Probation") calculation of defendant's offense level of 17, criminal history category of IV, and resulting Guidelines range of 37-46 months' incarceration. For the reasons outlined below, the government recommends a low-end Guidelines sentence of 37 months' imprisonment, three years' supervised release, and a \$100 special assessment. Such a sentence is sufficient, but not greater than necessary, to achieve the goals of sentencing set forth in 18 U.S.C. § 3553(a).

II. STATEMENT OF FACTS

On February 3, 2022, Los Angeles Police Department ("LAPD") officers parked behind a black Dodge sedan (the "Dodge") where the defendant was sitting in the front passenger seat. (Plea Agreement at 7-8, Dkt. 132; PSR ¶¶ 18-19.) Officers found two rounds of 9mm caliber ammunition in one of defendant's pockets. (Plea Agreement at 8; PSR ¶ 19.) An officer then searched the Dodge and found: (1) underneath the driver's seat, two Glock-style, Polymer80 9mm caliber handguns that did not bear legitimate manufacturing marks or serial

1 numbers (collectively, the "Ghost Guns"), which were loaded with a
2 total of twelve rounds of 9mm caliber ammunition; and (2) two rounds
3 of 9mm caliber ammunition inside one of the pockets of a pair of
4 jeans found in the rear passenger seat of the Dodge. (Plea Agreement
5 at 8; PSR ¶ 19.)

6 On February 7, 2022, an LAPD detective again searched the Dodge
7 pursuant to a California state search warrant and found - hidden in a
8 back compartment of the center console - forty-five rounds of 9mm
9 caliber ammunition in two black high-capacity pistol magazines, each
10 of which could hold more than fifteen rounds of ammunition
11 (collectively, the "Large-capacity Magazines"). (Plea Agreement at
12 8; PSR ¶ 20.) On February 3, 2022, the Large-capacity magazines were
13 in close proximity to the Ghost Guns, as they were all located in the
14 Dodge. (Plea Agreement at 8; PSR ¶ 20.) Both of the Ghost Guns were
15 semiautomatic firearms that could accept and attach to the Large-
16 capacity magazines. (Plea Agreement at 8; PSR ¶ 20.)

17 On February 3, 2022, defendant knowingly possessed a total of
18 the forty-five rounds of 9mm caliber ammunition found in the Large-
19 capacity Magazines and the two rounds of 9mm caliber ammunition found
20 in his pocket (collectively, the "Forty-seven Rounds"). (Plea
21 Agreement at 8; PSR ¶ 21.) At the time defendant possessed the
22 Forty-seven Rounds, defendant had previously been convicted, and knew
23 that he had been convicted of, a misdemeanor crime of domestic
24 violence, namely, Corporal Injury to a Spouse, in violation of
25 California Penal Code Section 273.5. (Plea Agreement at 8; PSR
26 ¶ 22.)

1 **III. SENTENCING GUIDELINES CALCULATION**

2 In the PSR, Probation determined that defendant had a base
3 offense level of 20 because the offense involved a semiautomatic
4 firearm that is capable of accepting a large capacity magazine and
5 the defendant was a prohibited person at the time he committed the
6 instant offense. (PSR ¶ 33; U.S.S.G. § 2K2.1(a)(4)(B).) Probation
7 also concluded that defendant should receive a three-level decrease
8 pursuant to U.S.S.G. §§ 3E1.1(a)-(b) because he demonstrated
9 acceptance of responsibility for the offense. (PSR ¶ 40-41.)

10 Probation also determined that defendant's prior criminal
11 convictions resulted in a total criminal history score of 9. (Id. ¶
12 61.) Based on this criminal history score, Probation determined that
13 defendant falls within criminal history category IV. (Id.)

14 Based on a total offense level of 17 and a criminal history
15 category IV, Probation determined that the advisory Guidelines
16 imprisonment range is 37 to 46 months, followed by a term of
17 supervised release of one to three years. (Id. ¶¶ 119, 122.) The
18 government agrees with all of these calculations.

19 **IV. THE GOVERNMENT RECOMMENDS 37 MONTHS' IMPRISONMENT AND A 3-YEAR** 20 **TERM OF SUPERVISED RELEASE**

21 The government recommends that the Court sentence defendant to a
22 low-end Guidelines sentence of 37 months' imprisonment, followed by a
23 three-year term of supervised release; a \$100 special assessment; and
24 no fine, as it appears defendant lacks the ability to pay a fine and
25 any money he does earn would be best used to support himself and his
26 dependents. (PSR ¶¶ 114-115.) Such a sentence is sufficient, but
27 not greater than necessary, to achieve the purposes set forth in 18
28 U.S.C. § 3553(a).

1 **A. Nature and Circumstances of the Offense**

2 The nature and circumstances of defendant's offense support a
3 sentence of 37 months' imprisonment, followed by a 3-year term of
4 supervised release. 18 U.S.C. § 3553(a)(1). Defendant possessed
5 Forty-seven Rounds of 9mm caliber ammunition, forty-five rounds of
6 which were found in Large-capacity magazines that were in close
7 proximity to the Ghost Guns. (PSR ¶ 19-20.) Indeed, defendant knew
8 that he could not lawfully possess the ammunition because he had
9 previously been convicted of a misdemeanor crime of domestic
10 violence. (Id. ¶ 18.)

11 **B. History and Characteristics of Defendant**

12 Defendant's history and characteristics also warrant the
13 government's recommended sentence. See 18 U.S.C. § 3553(a)(1). In
14 aggravation, defendant has several convictions and arrests, including
15 for driving under the influence and for domestic violence related
16 incidents. (PSR ¶¶ 48-57, 65.)

17 In mitigation, however, it is clear defendant has a drug use
18 problem that began in high school when his parents got divorced.
19 (PSR ¶¶ 79, 81.) Specifically, defendant began using methamphetamine
20 when he was 17 years old, and used methamphetamine on a daily basis
21 until the time of his arrest for the instant offense. (Id.)
22 Defendant has accepted responsibility for the instant offense, and
23 has indicated that he is open to substance abuse treatment at this
24 time, and would like to pursue a GED. (Id. ¶¶ 40-41, 100, 105.)

25 The government submits that a low-end Guidelines, 37-month
26 sentence appropriately balances these aggravating and mitigating
27 factors, and appropriately accounts for his acceptance of
28 responsibility. See USSG § 3553(a)(1).

1 **C. The Need for the Sentence to Reflect the Seriousness of the**
2 **Offenses, Promote Respect for the Law, Provide Just**
3 **Punishment, Afford Adequate Deterrence, and Protect the**
4 **Public**

5 The sentence must satisfy the need to punish defendant, as well
6 as society's need to reflect the seriousness of the offense; promote
7 respect for the law; provide just punishment; afford adequate
8 deterrence; and protect the public. 18 U.S.C. § 3553(a)(2). Here,
9 the government's recommended sentence will provide deterrence both to
10 defendant and to others who might otherwise be inclined to perpetrate
11 a similar crime. Finally, a three-year term of supervised release
12 following imprisonment will provide an additional layer of deterrence
13 and protection to the community. See 18 U.S.C. § 3583(c) (factors to
14 be considered in including a term of supervised release).
15 Defendant's criminal history, including his history of domestic
16 violence, demonstrates that a three-year term of supervised release
17 is necessary to effectively monitor defendant post-release. See
18 U.S.S.G. § 5D1.1, comment n.3(B) ("The court should give particular
19 consideration to the defendant's criminal history In
20 general, the more serious the defendant's criminal history, the
21 greater the need for supervision.").

22 **D. The Need to Avoid Unwarranted Disparities**

23 Section 3553(a)(6) requires the Court to minimize sentencing
24 disparities among similarly situated defendants. One way of doing so
25 is to correctly calculate the Guidelines range and then sentence
26 defendants within that range. See Gall v. United States, 552 U.S.
27 38, 54 (2007) ("[A]voidance of unwarranted disparities was clearly
28 considered by the Sentencing Commission when setting the Guidelines
ranges."). Here, under the correctly calculated Guidelines range,

1 other defendants "with similar records who have been found guilty of
2 similar conduct" as defendant, can expect a prison sentence between
3 37 and 46 months' imprisonment. See U.S.S.G. § 5A (Sentencing
4 Table). Consequently, the government's recommended sentence, which
5 is at the low end of that range, avoids an unwarranted disparity with
6 similarly situated defendants.

7 **E. Fine**

8 The government agrees with Probation that defendant does not
9 appear to have the ability to pay a fine, and that any income he
10 earns upon release should be used to support himself and his
11 dependents. (PSR ¶ 115.)

12 **V. CONCLUSION**

13 For the foregoing reasons, the government respectfully requests
14 that this Court sentence defendant to a low-end Guidelines sentence
15 of: 37 months' imprisonment; three years' supervised release; a
16 mandatory \$100 special assessment; and no fine.